

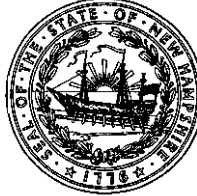
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THE STATE OF NEW HAMPSHIRE

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PUBLIC UTILITIES COMMISSION
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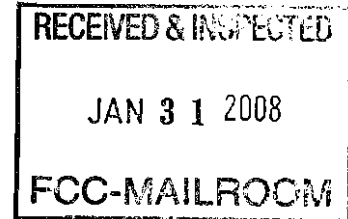
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January 23, 2008



Ms. Marlene A. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Certification of State-Law Regulation of Utility Pole Attachments Pursuant to
47 U.S.C. § 224(c) and 47 CFR § 1.1414

Dear Secretary Dortch:

The New Hampshire Public Utilities Commission (NH PUC) hereby certifies to the Federal Communications Commission pursuant to 47 U.S.C. § 224(c) and 47 CFR § 1.1414(a) that the State of New Hampshire, via authority delegated to the NH PUC by 2007 N.H. Laws Ch. 340 (codified as N.H. Rev. Stat. Ann. 374:34-a),

- (1) regulates rates, terms and conditions for pole attachments,
- (2) in so regulating, has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services, and
- (3) has issued and made effective rules and regulations implementing the State of New Hampshire's regulatory authority over pole attachments, including a specific methodology for such regulation that has been made publicly available in New Hampshire.

Specifically, Chapter Puc 1300 of the New Hampshire Code of Administrative Rules became effective on January 17, 2008. A copy of these rules is attached.

Please note that, although the Puc 1300 rules are designated as "interim" rules pursuant to the New Hampshire Administrative Procedure Act, N.H. Rev. Stat. Ann. Ch. 541-A, section 3 of the relevant enabling legislation, 2007 N.H. Laws Ch. 340:3, specifies that these interim rules may be effective for up to two years. A copy of the enabling legislation is attached. In the opinion of the NH PUC, these rules meet the certification

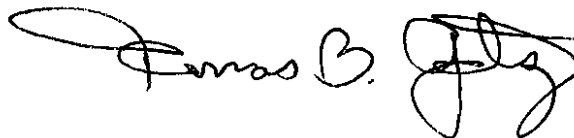
Ms. Marlene A. Dortch
Secretary, Federal Communications Commission
January 23, 2008
Page 2

standard of 47 CFR § 1.1414(a) notwithstanding their formal designation as interim rules. The NH PUC is in the process of commencing a rulemaking proceeding for the purpose of promulgating regular (as opposed to interim) Puc 1300 rules within the meaning of the New Hampshire Administrative Procedure Act. It is expected that the regular rules will become effective well before the expiration of the interim rules in 2010.

Finally, please note that the “specific methodology . . . that has been made publicly available” as required by 47 CFR § 1.1414(a)(3) is the methodology currently in use by the Federal Communications Commission pursuant to 47 CFR § 1.1409. The NH PUC adopted this approach at the specific direction of the enabling legislation. *See* 2007 N.H. Laws Ch. 340:2 (providing that, for a period of at least two years after the legislation’s effective date of July 16, 2007, “the rules shall be consistent with the regulations adopted by the Federal Communications Commission . . . including the formulae used to determine maximum just and reasonable rates”). The NH PUC is aware that the FCC has opened a rulemaking proceeding to consider possible changes to these regulations, but the Puc 1300 rules will *not* automatically change to reflect any revisions by the FCC to the Code of Federal Regulations. Further rulemaking under New Hampshire law would be required to implement any such changes.

Any questions concerning the foregoing should be directed to the NH PUC’s general counsel, Donald M. Kreis, who can be reached at 603.271.6006. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Getz", with a stylized flourish at the end.

Thomas B. Getz
Chairman

Cc: Service List in NH PUC Docket No. DRM 07-119

Encl.

CHAPTER Puc 1300 UTILITY POLE ATTACHMENTS

Statutory Authority: RSA 374:34-a

PART Puc 2501 PURPOSE AND APPLICABILITY

Puc 2501.01 Purpose. The purpose of Puc 1300, pursuant to the mandate of RSA 374:34-a, is to provide for the resolution of disputes involving the rates, charges, terms and conditions for pole attachments.

Puc 2501.02 Applicability. Puc 2500 shall apply to

(a) Public utilities within the meaning of RSA 362, including rural electric cooperatives for which a certificate of deregulation is on file pursuant to RSA 301:57, that own, in whole or in part, any pole used for wire communications or electric distribution.

(b) Other persons with facilities attached to such poles, or seeking to attach facilities to such poles.

PART Puc 1302 DEFINITIONS

Puc 1302.01 "Commission" means the New Hampshire public utilities commission.

Puc 1302.02 "FCC" means the federal communications commission.

Puc 1302.03 "Pole" means "pole" as defined in RSA 374:34-a, namely "any pole, duct, conduit or right-of-way that is used for wire communications or electricity distribution and is owned in whole or in part by a public utility, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57."

PART Puc 1303 ACCESS TO POLES

Puc 1303.01 Access Standard. The owner or owners of a pole shall provide access to such pole on terms that are just, reasonable and nondiscriminatory. Notwithstanding this obligation, the owner or owners of a pole may deny a request for attachment to such pole when there is insufficient capacity on the pole or for reasons of safety, reliability and generally applicable engineering purposes.

Puc 1303.02 Owner Obligation to Negotiate. The owner or owners of a pole shall, upon the request of a person seeking a pole attachment, negotiate in good faith with respect to the terms and conditions for such attachment.

Puc 1303.03 Requestor Obligation to Negotiate. A person seeking a pole attachment shall contact the owner or owners of the pole and make a reasonable effort to negotiate an agreement for such attachment.

Puc 1303.04 Voluntary Agreements. Any pole attachment agreement entered into voluntarily under this part shall be presumed to be just, reasonable and nondiscriminatory. The commission shall not alter the terms of any such agreement.

PART Puc 1304 DISPUTE RESOLUTION

Puc 1304.01 Lack of Agreement. A person unable to reach agreement with the owner or owners of a pole or poles subject to this chapter may petition the commission pursuant to Part Puc 203 for an order establishing the rates, charges, terms and conditions for the pole attachment or attachments. Such a petition shall include the information required for complaints to the FCC made pursuant to the terms of 47 CFR § 1.1404(d) through (m) in effect on July 16, 2007.

Puc 1304.02 Dispute Following Agreement or Order. A party to a voluntary pole attachment agreement entered into pursuant to this chapter, or a party subject to an order of the commission establishing rates, charges, terms or conditions for pole attachments, may petition the commission pursuant to Puc 203 for resolution of a dispute arising under such agreement or order.

Puc 1304.03 Procedure. Upon receipt of a petition pursuant to this part, the commission shall conduct adjudicative proceedings pursuant to Puc 203 for the purpose of considering and ruling on the petition. The commission shall issue its order resolving the complaint within 180 days of the receipt of a complete petition under this part.

Puc 1304.04 FCC Standard Applicable. In determining just and reasonable rates under this chapter, the commission shall apply the standards and formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007.

Puc 1304.05 Remedies. When the commission determines just and reasonable rates under this Part that differ from the rates paid by the petitioner, the commission shall order a payment or refund, as appropriate. Such refund or payment shall be the difference between the amount actually paid and the amount that would have been paid under the rates established by the commission, plus interest, as of the date of the petition.

PART Puc 2505 CERTIFICATION TO FCC

Puc 2505.01 Certification. Within 10 days of the effective date of these rules, the commission shall certify to the FCC that the commission regulates the rates, terms and conditions for pole attachments in a manner sufficient to supersede FCC jurisdiction pursuant to 47 U.S.C. § 224 in effect on July 17, 2007 or any successor federal statute.

CHAPTER 340

SB 123 – FINAL VERSION

04/05/07 1184s

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2007 SESSION

07-1284

06/03

SENATE BILL ***123***

AN ACT relative to pole attachments.

SPONSORS: Sen. Fuller Clark, Dist 24; Sen. Burling, Dist 5; Rep. Kaen, Straf 7; Rep. Cali-Pitts, Rock 16

COMMITTEE: Energy, Environment and Economic Development

ANALYSIS

This bill authorizes the public utilities commission to regulate pole attachments.

This bill is a request of the public utilities commission.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

04/05/07 1184s

07Jun2007... 1894h

06/27/07 2208eba

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seven

AN ACT relative to pole attachments.

Be it Enacted by the Senate and House of Representatives in General Court convened:

340:1 New Subdivision; Pole Attachments. Amend RSA 374 by inserting after section 34 the following new subdivision:

Pole Attachments

374:34-a Pole Attachments.

I In this subdivision, a "pole" means any pole, duct, conduit, or right-of-way that is used for wire communications or electricity distribution and is owned in whole or in part by a public utility, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57.

II. Whenever a pole owner is unable to reach agreement with a party seeking pole attachments, the commission shall regulate and enforce rates, charges, terms, and conditions for such pole attachments, with regard to the types of attachments regulated under 47 U.S.C. section 224, to provide that such rates, charges, terms, and conditions are just and reasonable. This authority shall include but not be limited to the state regulatory authority referenced in 47 U.S.C. section 224(c).

III. The commission shall adopt rules under RSA 541-A to carry out the provisions of this section, including appropriate formula or formulae for apportioning costs.

IV. In exercising its authority under this subdivision, the commission shall consider the interests of the subscribers and users of the services offered via such attachments, as well as the interests of the consumers of any pole owner providing such attachments.

V. Nothing in this subdivision shall prevent parties from entering into pole attachment agreements voluntarily, without commission approval.

VI. Any pole owner shall provide nondiscriminatory access to its poles for the types of attachments regulated under this subdivision. A pole owner may deny access to its poles on a nondiscriminatory basis where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

VII. The commission shall have the authority to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments.

340:2 Adoption of Rules. The public utilities commission shall expeditiously adopt interim rules and then final rules to carry out the provisions of RSA 374:34-a. For a period of at least 2 years after the effective date of this act, the rules shall be consistent with the regulations adopted by the Federal Communications Commission under 47 U.S.C. section 224, including the formulae used to determine maximum just and reasonable rates. The public utilities commission may incorporate into its rules, by reference, applicable regulations of the Federal Communications Commission. Notwithstanding RSA 541-A:19, X, the interim rules may be effective for up to 2 years. Once the interim rules are adopted, pole attachments shall become subject to RSA 374:34-a and the rules of the public utilities commission.

340:3 Effective Date. This act shall take effect upon its passage.

Approved: July 16, 2007

Effective: July 16, 2007